

DEPARTMENT OF STATE REVENUE

01-20191523.LOF

**Letter of Findings Number: 01-20191523
Individual Income Tax
For the Year 2016**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

HOLDING

Couple filed jointly with the Internal Revenue Service, and filed a joint return in Indiana but filed using the incorrect form. After applying the reported numbers with the correct form, Couple's Indiana income tax assessment was reduced, but not eliminated.

ISSUE

I. Individual Income Tax - Filing Status.

Authority: IC § 6-3-4-2.

Taxpayers protest the assessment of individual income tax.

STATEMENT OF FACTS

For the year at issue, Taxpayers were a married couple, ("Husband") and ("Wife"). As the result of a records comparison with the Internal Revenue Service, the Indiana Department of Revenue ("Department") found that Taxpayers' federal-reported adjusted gross income did not match the Indiana-reported adjusted gross income tax. The Department therefore issued a proposed assessment for tax on the difference between the two reported adjusted gross income amounts. Taxpayers protested the assessment, the Department held a hearing, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Filing Status.

DISCUSSION

Husband was active duty military stationed in California but domiciled in Indiana. Wife was domiciled in California. Wife filed a tax return in California for 2016 filing as "married/RDP filing separately". Taxpayers' filing status for their 2016 Federal Tax Return was "Married Filing Jointly". The Department reviewed Taxpayers' 2016 Indiana and Taxpayers' 2016 Federal returns. There was a discrepancy between the two reported amounts and the Department imposed Indiana income tax on the difference.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Under IC § 6-3-4-2(d):

Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. Where a joint return is filed by a husband and wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.

Likewise, under IC § 6-3-4-2(e):

Where separate returns are made by husband and wife pursuant to the Internal Revenue Code, separate returns shall be made pursuant to this article.

At hearing, Husband stated that he filed separately in Indiana. In order to reflect Wife's out-of-state income, Husband reported only his income on the IT-40. Husband filed using the IT-40 Full Year Resident Return and filed as "married filing jointly." After further review of Taxpayers' filing methodology, the Department finds that the IT-40 does not allow for Taxpayers to separate the spouse's income. This resulted in the discrepancy in the reported adjusted gross income in Indiana and to the IRS.

Taxpayers should have filed an IT-40PNR with the same filing status in Indiana as on their Federal return. An IT-40PNR allows taxpayers to account for out-of-state income separately from Indiana income. After discovering this filing error, the Department agrees that, that if Taxpayers had used the proper form, their Indiana income tax assessment would be less than originally calculated. Therefore, the Department will recalculate Taxpayers' 2016 income tax due using the correct methodology and will issue a revised assessment. Taxpayers have partially met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is sustained to the extent described above.

April 9, 2020

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